

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

JOHN PARKS SIMPSON and FRED A
SIMPSON, wife,

Plaintiffs,

-v-

AIR LIQUIDE AMERICA, LP; MINE
SAFETY APPLIANCES COMPANY;
PORTER WARNER INDUSTRIES, LLC;
WESCO REFRACTORIES, INC., AND JOHN
DOE 1-5,

Defendants.

C.A. NO. 3:09-cv-00172-FDW-DSC

**PLAINTIFFS' AND DEFENDANT MINE SAFETY APPLIANCES COMPANY'S JOINT
MOTION FOR ENTRY OF CONSENT ORDER VOLUNTARILY DISMISSING
DEFENDANT MINE SAFETY APPLIANCES COMPANY WITHOUT PREJUDICE**

Under Federal Rule of Civil Procedure 41(a), Plaintiffs and Defendant Mine Safety Appliances Company ("MSA") jointly move this Court for an order dismissing without prejudice MSA as a party to this action and state as follows:

Plaintiffs instituted this product liability action, naming MSA and a number of other parties as Defendants. At this stage in the discovery process, Plaintiffs and MSA have determined and agreed that MSA should be dismissed without prejudice. Specifically, discovery thus far has produced no identification of any MSA product that could have potentially caused Plaintiff John Parks Simpson's alleged injuries.

The voluntary dismissal of parties who have answered the Complaint requires a Court order pursuant to Federal Rule of Civil Procedure 41(a)(2). The parties respectfully submit that the Court should exercise its discretion in dismissing MSA from this action because

no product of MSA's has been identified as being at issue in this litigation. Should such evidence emerge during further discovery, Plaintiffs intend to re-file their claims against Defendant MSA as the rules permit. Accordingly, Plaintiffs and MSA request that the Court enter the attached proposed order designating this voluntary dismissal as Plaintiffs' first voluntary dismissal of MSA which will not operate as an adjudication of the merits pursuant to Federal Rule of Civil Procedure 41(a)(1)(B).

CONCLUSION

For the foregoing reasons, Plaintiffs and MSA respectfully request that this Court grant their Joint Motion to Voluntarily Dismiss Without Prejudice Defendant Mine Safety Appliances Company and enter the proposed Order attached hereto.

Jointly and respectfully submitted this 27th day of July 2010.

JEKEL-DOOLITTLE, LLC

s/ Frederick Jekel

Frederick Jekel

Admitted Pro Hac Vice

Email: fritz@j-dlaw.com

JEKEL-DOOLITTLE, LLC

210 Wingo Way, Suite 201

P.O. Box 2579

Mt. Pleasant, SC 29465

(843) 654-7700

(888) 567-1129 (fax)

ATTORNEYS FOR PLAINTIFFS

JACKSON LEWIS LLP

s/ Ingrid Blackwelder Erwin

Ingrid Blackwelder Erwin

North Carolina Bar Number: 18095

E-mail: erwini@jacksonlewis.com

JACKSON LEWIS LLP

One Liberty Square

55 Beattie Place, Suite 800

Greenville, SC 29601

(864) 232-7000

(864) 235-1381 (fax)

ATTORNEYS FOR DEFENDANT

MINE SAFETY APPLIANCES COMPANY

Consented to by:

JEKEL-DOOLITTLE, LLC

s/ Frederick Jekel

Frederick Jekel

Admitted Pro Hac Vice

E-mail: fritz@j-dlaw.com

JEKEL-DOOLITTLE, LLC

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JACKSON LEWIS LLP

One Liberty Square

55 Beattie Place, Suite 800

Greenville, SC 29601

(864) 232-7000

(864) 235-1381 (fax)

ATTORNEYS FOR DEFENDANT

MINE SAFETY APPLIANCES COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed with the Court the foregoing PLAINTIFFS' AND DEFENDANT MINE SAFETY APPLIANCES COMPANY'S JOINT MOTION FOR ENTRY OF CONSENT ORDER VOLUNTARILY DISMISSING DEFENDANT MINE SAFETY APPLIANCES COMPANY WITH PREJUDICE which was served upon all counsel of record as listed on the docket of this Court via CM/ECF at the following addresses:

William M. Graham
bgraham@wallacegraham.com
Attorney for Plaintiffs

Frederick John Jekel
fritz@j-dlaw.com
Attorney for Plaintiffs

Noelle T. Valentine
Noelle.valentine@alston.com
Attorney for Defendant Celite Corporation

Daniel Barry Eller
deller@gwblawfirm.com
Attorney for Porter Warner Indus., LLC

Anthony T. Lathrop
tonylathrop@mvalaw.com
Attorney for Defendant Air Liquide America, LP

Matthew David Lincoln
mattlincoln@mvalaw.com
Attorney for Defendant Air Liquide America, LP

Tracy L. Eggleston
teggleston@cozen.com
Attorney for Defendant Wesco Refractories, Inc.

Daniel B. White
dwhite@gwblawfirm.com
Attorney for Porter Warner Indus., LLC